# APPENDIX A

## AFFIDAVIT

(Supporting Application to Intervene, Opposing Interlocutory Injunction and Supporting Motion for Bond).

STATE OF FLORIDA:
COUNTY OF DUVAL:

(EXHIBITS MENTIONED HEREIN HAVE BEEN OMITTED IN THIS APPENDIX)

I, JAMES D. COLBERT, being first duly sworn, make this affidavit for the purpose of supporting the Application of A. Duda & Sons, Inc., a Florida corporation, and A. Duda & Sons Cooperative Association, a cooperative association organized and existing under the laws of Florida (the said corporation will be referred to herein as "Duda Corp." and the said Cooperative will be referred to herein as "Duda Co-op;" collectively, they will be referred to as "Duda") to intervene in this cause and for the further purpose of opposing plaintiff's motion for interlocutory injunction and for the further purpose of supporting Duda's motion for bond in the event said interlocutory injunction should be issued:

1. *ASSISTANT TO PRESIDENT:* I am James D. Colbert and my address is Route 1, Box 99, Oviedo, Florida. For more than 19 years I have been employed by the "Duda" interests and for the past eight years I have been assistant to Mr. Andrew Duda, Jr., President of A. Duda & Sons, Inc., and A. Duda & Sons Cooperative Association, and my duties are intimately connected with the business affairs of both the "Duda Corp." and "Duda Co-op". I am the same

James D. Colbert who testified before Paul C. Albus, ICC Examiner, on Wednesday, November 13, 1963, at West Palm Beach, Florida, at the hearings held in the matter now before this Court (pages 131-170 of Stenographers' Minutes, hereinafter referred to by symbol "R").

2. *"DUDA CORP.":* "Duda Corp." is a Florida corporation and is engaged in the *production* of vegetables, including celery, sweet corn, cabbage, potatoes and salad greens, such as endive, escarole, romaine, etc. It also *produces* sugar cane and citrus and produces and markets cattle. In these proceedings, our vegetable operation at or near Belle Glade, Florida, is the subject of this affidavit as it relates to rail service (R. 132-135).

3. *"DUDA CO-OP":* "Duda Co-op" is a cooperative association under the laws of Florida, more than 90% of which is owned by "Duda Corp.", and as such cooperative is engaged in harvesting, processing, packaging and marketing of vegetables for "Duda Corp." and others (R. 133).

4. *SCATTERED OPERATIONS:* In November of 1963, and for many years prior thereto, "Duda Co-op" was using as its primary facility a pre-cooler plant in Belle Glade, Florida, which it leased from Florida Pre-Cooler, Inc., but which had long been inadequate for "Duda Co-op's" total operation, so that part of its processing had been diverted to other plants (R. 135).

5. *BELLE GLADE "OUTGROWN":* Because of our continued expansion and the increasing inadequacy of the Belle Glade facilities, rail and truck congestion, risk of fire, outmoded processing equipment, economic waste, excessive handling costs and other factors of inefficiency and expense (R. 135-136), the decision was made about 1955 for "Duda Co-op" to construct its own processing and pre-cooling plant at the Belle Glade Farm. "Duda Corp.'s" Belle Glade farm has now grown to 9,100 acres of which 5,100 acres are de-

voted to vegetables and the remainder to sugar cane; and an additional 5,760 acres of leased muckland are being developed, part for vegetables and part for cattle (R. 134).

6. *FEC NO HELP:* About 1958 we contacted officials of the Florida East Coast Railway for the purpose of obtaining rail service at our Belle Glade farm to enable "Duda Co-op" to build our plant there, but we were unsuccessful (R. 137-139) so we later sought help from the Atlantic Coast Line Railroad Company (R. 148-149).

7. *FEASIBILITY STUDY—SUGAR CANE ROUTS VEGETABLES—SITE PICKED:* In early 1963 we engaged George Fry and Associates to do a feasibility study of a proposed cooler installation to be located at our Belle Glade farm. By this time the market for and our entry into sugar cane production caused the displacement of vegetables previously grown north of Bolles Canal and we moved farther south on our farm into the Everglades and developed additional acreage for the production of vegetables (R. 141). This movement of the vegetable farming to the south was an additional factor that made the early construction of our own plant mandatory and we prevailed upon the Coast Line to make application to the Interstate Commerce Commission for permission to extend its Okeelanta Line to a location on the *western edge* of our Belle Glade farm, as will more fully appear from a map attached hereto and made a part hereof as Exhibit A.

8. *COAST LINE ONLY HOPE:* At the request of "Duda", Coast Line filed its application on July 10, 1963, for permission to serve "Duda Co-op" and others and we have supported this application because it would, in our opinion, serve our needs best and seemed to be *our only chance* for rail service which is most essential in the orderly marketing of vegetables and produce (R. 135, 145-146).

9. *NEW PLANT FEASIBLE:* On September 11, 1963, George Fry &.Associates completed their study and report and advised us that with our own plant we could effect a tangible savings of one cent per crate (in addition to many more intangible savings) and that the proposed plant and pre-cooler could be paid for in from 10 to 15 years. This represented a $25,000 per year savings in processing alone.

10. *SECOND SITE PICKED:* On September 13, 1963, the Florida East Coast filed its application with the Interstate Commerce Commission to extend its tracks to a point we selected as a second site, on the *east side* of our Belle Glade farm (see Exhibit A).

11. *COAST LINE PREFERRED:* Although we picked a site on the east side of our farm for the location of our plant, in the event the application of the FEC was approved and the Coast Line's application was denied, we supported the Coast Line at the hearings held as aforesaid on November 12-15, 1963, at West Palm Beach. The Coast Line service was and is our preference.

12. *FIRE COMPELS CHOICE OF SITE:* However, on December 11, 1963, the primary facilities we leased in Belle Glade were destroyed by fire and this made more urgent our decision to make a choice between the site selected for Coast Line service and the site selected for FEC service, since we did not want the tracks of either railroad to bisect our farm. The decision to build a new plant had been made definite in September 1963 and only the final choice of the site remained. Despite our preference for Coast Line, we delayed further action until after the Report, Certificate and Order recommended by the Hearing Examiner was filed on March 13, 1964. Since this Report was wholly in favor of the Coast Line's application and wholly unfavorable to the FEC application, we determined that we could delay no longer in making a final site choice. We decided to move

ahead with the construction of our new facilities at a site on the west adjacent to the proposed Coast Line right of way; and, because of further expansion to the south actually picked a location about 1½ miles south of our first designated location (as shown on Exhibit A) and we have now located the facility as shown on Exhibit C attached hereto, still further south of Bolles Canal.

13. *STATUS OF CONSTRUCTION:* The design and engineering of our new plant follows that generally described in the feasibility study of George Fry and Associates, copy of which will be offered in evidence. The "Duda Co-op" is acting as its own "prime contractor". The plans, drawings and specifications are under the supervision of Lakeland Engineering Associates, Inc., of Lakeland, Florida. A copy of the plans and specifications prepared to date will be offered in evidence. As of January 15, 1965, a progress report has been furnished by Lakeland Engineering Associates, Inc., copy of which is attached hereto as Exhibit B. As will more fully appear from said report, the construction site has been prepared and is now ready for the construction of the footings of the Pre-Cooler Complex. To January 13, 1965, approximately $58,322.57 has been expended by "Duda Co-op" for labor and equipment in preparation of said site for construction; and $40,915.42 for engineering fees, compaction tests, dynamite, dump truck rental and incidental expenses. In addition, one contract for $56,868 for construction and installation of Vacuum Retorts in the Pre-Cooler has been awarded and another contract for $363,825.10 for refrigeration was awarded January 20, 1965. Bids for other major work are due to be received January 28, 1965, and the remaining plans and specifications are nearly complete. The exact charges for other materials and services to date are not known, but "Duda Co-op" is well past the "point of no return" in the expenditure of more than one and a half millions of dollars for the new facilities

now under construction on the Coast Line site. These facilities will be completed no later than October 31, 1965, in time to be utilized for the 1965-1966 vegetable season and these facilities will be used in the harvesting, processing and marketing of the 1965-1966 crop.

14. *COST AND DAMAGE OF DELAY:* "Duda Co-op" had the assurance of Coast Line engineers that the rail facilities could be constructed in 12 months and even now is reassured by Coast Line that if construction can be commenced by February 1, 1965, that every effort will be made to complete the rail facilities by October 31, 1965, in time to provide rail service for the 1965-1966 crop. If such rail facilities are not completed and available the "Duda Co-op" and the members thereof, including "Duda Corp.", will suffer irreparable harm and damages by reason of the additional costs and expenses involved in trucking vegetables and produce to a railhead for loading.

The added cost and expense which "Duda Co-op" and ultimately "Duda Corp." will incur and suffer can be accurately estimated by reason of studies made of the cost of extra handling of crates during the FEC strike. Based on these studies, made under my supervision, and my own knowledge of our operations, the added cost and expense of *extra* handling of the 1965-1966 vegetable crop, if no rail facilities are available at our new processing plant and crates are trucked to Lake Harbor for rail loading, is $157,720 for 1900 carloads.

This figure is arrived at as follows:

| | |
|---|---|
| (a) Use of 3 semi-trucks, with 10 refrigerated vans, gasoline, tires, maintenance and service costs, and drivers | $72,600.00 |
| (b) Extra loading crews at railhead, extra ice, extra crew trucks and the operation thereof, and incidentals | 85,120.00 |
| | $157,720.00 |

These estimates make no allowance for the cost of accidents, added expense of supervision of widespread operations, extra bruising and loss of vegetables, as well as loss of consumer appeal, added complaints and adjustments, deprivation of benefits anticipated from inbound delivery by rail of fertilizer, insecticides, crate material, heavy agricultural equipment (we are an Allis Chalmers distributor, but we are also our own best customer) and other supplies; and the added expense is based on only *1900* carloads instead of 1966 estimated by FEC as the average shipments for five years.

15. *RAIL SERVICE VITAL PART OF NEW FACILITY:* To achieve the full advantage of the careful study and planning that has gone into the design and engineering of the "Duda Co-op" pre-cooler-complex rail service is vital. When the new facility opens in November 1965, an entirely new concept of harvesting, handling, pre-cooling and marketing will be put into operation. All handling from the ground to the customer will be mechanical; vegetables will be graded and packaged in the field and the crates of uniform grades and sizes will be assembled there in special loading patterns for handling by clamp-lifts that are gentle enough to handle eggs; mechanized equipment will place these unit loads in the most modern and efficient pre-coolers known to the industry, with a choice between *hydro-cooling* and *vacuum cooling*, depending on the particular vegetable and customer preference; and, after pre-cooling, refrigerated storage is provided until an order is received and shipment required.

The full benefit and value of all this careful work will be lost and dollars sacrificed if crates must be transported by truck to a railhead in car load or less than car load lots and moved by hand from truck to refrigerated railroad cars. As shown by Exhibits E and F attached hereto, rail service has been designed into and is an inseparable part of our entire complex and operation.

16. *FEC SHOULD DELAY NO MORE:* As will more fully appear from the record in this cause, we feel the FEC could not, or would not, and did not take advantage of its opportunity to provide the service we need. "Duda's" interests have made the best arrangements that could be made for its operations while the Interstate Commerce Commission spent 13 months processing Coast Line's application in the interest of all concerned, except "Duda", which interest had to be held in a state of "limbo" until circumstances forced it to act for its own protection. If, after all this time has passed, the FEC cannot agree with the determination of the ICC, further delay should not be at "Duda's" expense for delay is dollars lost forever to "Duda" and the least amount one season's delay will cost "Duda Co-op" and ultimately "Duda Corp." is $160,000.00.

JAMES D. COLBERT

Sworn to and subscribed before me
this 21st day of January, A. D. 1965.

## APPENDIX B

Wilmington, N. C., May 22, 1958

Mr. J. Turner Butler, Trustee,
Florida East Coast Railway,
Florida Title Building,
Jacksonville, Florida

Dear Sir:

A. Duda & Sons, home office Slavia, Fla., owns approximately twelve sections of farm land in Palm Beach County which at the nearest point are located some four miles from Florida East Coast Railway in vicinity of South Bay, Fla.

On a number of occasions during recent years A. Duda & Sons has expressed interest in having Coast Line provide rail service to its property in Palm Beach County and only within the past week or so has brought up the subject again. The nearest point on Coast Line to the Duda property is stub-end of our Okeelanta Branch, and a track extension of approximately eight miles would be necessary, whereas only about four miles would be involved should a track extension be made from FEC. I am sure you are familiar with the application of both Coast Line and FEC to construct a line of railroad to serve the sugar mill at Okeelanta, Fla., and of the Commission's decision in Finance Docket 15335, decided August 25, 1947, under which Coast Line was authorized to construct a line of railroad to serve the sugar mill at Okeelanta and FEC's application was denied. In authorizing Coast Line to construct branch line extension to serve the sugar mill at Okeelanta, the Commission at the same time denied Coast Line the right to construct the branch easterly from the site of the sugar mill at Okeelanta to a point on U.S. No. 25 approximately two miles in length. As FEC Railway

trackage is much nearer the Duda property than is Coast Line trackage, Coast Line would offer no objection to the construction of a track by FEC to serve the Duda property. If FEC Railway is not interested in constructing such a track, I shall be glad if you will let me know whether FEC will offer any objection should Coast Line enter into negotiations with A. Duda & Sons with view of constructing a track to serve the Duda property.

Your advice in this respect will be appreciated.

Very truly yours,

W. T. RICE
*President*

I.C.C. F.D. 22696.
Exhibit 3

## APPENDIX C

P. O. Box 1259
Jacksonville 1, Florida

June 3rd, 1958
File 15670

Okeelanta Branch —
*A. Duda & Sons.*

Mr. W. Thomas Rice, President
Atlantic Coast Line Railroad Company
Wilmington, North Carolina

Dear Mr. Rice:

I have yours of May 22nd with reference to the question of the construction of a line of railroad in Palm Beach County to reach a large area consisting of twelve sections of farm land belonging to A. Duda & Sons.

Since receipt of your letter we have had some preliminary advice from our people with reference to this project which was under consideration several years ago at which time we understand the Duda interests approached the Coast Line as well as the Florida East Coast relative to constructing this branch line. The project apparently has not been urged but we understand the Duda's are now anxious to have a decision as to what the Atlantic Coast Line is willing to do and you inquire as to what the attitude of the Florida East Coast would be either as to the construction of the line or opposition to the Coast Line doing so. As stated above, this is a new project about which we have only preliminary information but on the basis of what information we have we believe it will be to the interest of the Florida East Coast

to provide this short spur track and unless you hear to the contrary, after we have more information, we will arrange to do so.

Yours very truly,

J. TURNER BUTLER AND WILLIAM A. HALLOWES, *Trustees*

By

J. Turner Butler

I.C.C. F.D. 22696
Exhibit 4

# APPENDIX D

COMPOSITE OF A. C. L. EXH. I
AND F. E. C. EXH. C.